

REMARKS

Claims 1, 3-10, 13-29, 32 and 33 are pending in this application. Claims 5-8, 10, 13-16, and 19-22 have been amended. Claims 7, 8, 15, 16, 21 and 22 have been amended to correct typographical errors. Claims 5, 6, 10, 13, 14, 19 and 20 been amended as discussed below. No new matter has been added. Claims 11 and 12 have been cancelled.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

Rejection of claims 5-7, 13-15 and 19-22 under 35 U.S.C. §112, first paragraph

The Examiner rejected claims 5-7, 13-15 and 19-22 under 35 U.S.C. §112, first paragraph as being indefinite. This rejection is traversed. The Examiner asserts that the phrase "or combinations thereof" is indefinite. Applicants disagree, however to advance prosecution, the Applicants have amended claims 5, 6, 13, 14, 19 and 20 to change 'or' to 'and'. This amendment does not material effect the scope of the claims, as claims 5, 13 and 19 each refer to the use of 'at least one structural aspect' of the corrugations. This means that a plurality of different structural aspects may be used, including those aspect listed in the claims. For this reason, the scope of the claims is not materially changed and the Applicants respectfully request that this rejection be withdrawn.

Rejection of claims 1, 3-29, 32 and 33 under 35 U.S.C. §103

The Examiner rejected claims 1, 3-29, 32 and 33 under 35 U.S.C. §103 as obvious over U.S. Patent No. 4,852,704 to Brockenbrough et al. ("Brockenbrough"). This rejection is traversed.

Initially, the Applicants are confused by the rejection because it is captioned as being based on Brockenbrough alone, but the body of the rejection makes reference to

U.S. Patent No. 5,011,642 to Welygan et al. (“Welygan”) and the Examiner’s response to the Applicants’ arguments appears to rely on both references. Clarification is requested, but Applicants have treated the rejection as based on the combination of Brockenbrough and Welygan.

With regard to claims 1, 7, 15, 21, 28 and 29, the Examiner’s response to the Applicants’ arguments ignores the plain language of the claims. The Examiner focuses on the issue of motivation to combine the references; however, motivation to combine is secondary to the primary issue of whether the references disclose every element of the claims.

As discussed in Applicants’ previous response regarding claims 1, 28 and 29, neither Brockenbrough nor Welygan disclose or suggest the use of a hinge to separate two pluralities of corrugations or surface features. This element has never been addressed by the Examiner in any office action and the Examiner’s response to the Applicants’ arguments do not address this point. Applicants continue to assert that the cited references do not combine to form the claimed invention because no hinge is taught or suggested. Because each element of the claims is not found in the references, the references do not render the claims obvious. Applicants respectfully request that rejection of these claims be withdrawn.

Furthermore, as discussed in Applicants’ previous response regarding claims 7, 15 and 21, the references do not disclose the use friction as an energy absorption technique. As above, the Examiner’s response to the Applicants’ argument does not address this point. Applicants continue to assert that the cited references do not combine to form the claimed invention because the use of friction as an energy absorbing technique is not taught or suggested. Because each element of the claims is not found in the references, the references do not render the claims obvious. Applicants respectfully request that rejection of these claims be withdrawn.

With regard to claims 4, 9, amended 10, 17, 18, 23, 24-28 and 33, the Examiner asserts that the use of differing compositions in the layers of the energy absorber is obvious because the Applicant “has not disclosed that having different compositions solves any stated problem or is for any particular purpose”. Applicants disagree with this statement, as in the previous office action the Applicants identified where the benefits of having layers of different materials is discussed in the specification (e.g. in paragraph [0048]). Applicants continue to assert that the Examiner is impermissibly placing the burden on the Applicants to show non-obviousness. Applicants are entitled to a patent unless the Examiner establishes an unrebutted *prima facie* case of obviousness. MPEP §2144.

Moreover, with regard to these claims, neither Brockenbrough nor Welygan disclose or suggest the use of layers of differing materials or differing structural aspects between the layers of the claims. Thus, the cited references do not combine to form the claimed invention. Because each element of the claims is not found in the references, the references do not render the claims obvious. Applicants respectfully request that rejection of these claims be withdrawn.

CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 04-1512 for any fee which may be due.

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